Supreme Court, U.S.
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OFFICE OF THE CLERK

(1)

Number: 99-2647
CA-98-1907-MJG

In The

Supreme Court of the United States

James M. Thompson,

Petitioner

v.

Pete's Brewing Company

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

James M. Thompson, pro se
12 Snowberry Court
Hunt Valley, MD 21030-1949
410-527-1026

31pp

Questions Presented for Review

Preface:

In 1967 the Congress of the United States passed the Age Discrimination in Employment Act (ADEA) which clearly states without equivocation in section 626(c) (1)

> "Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter: ...And (2) "In an action brought under paragraph (1), a person **shall be entitled to a trial by jury** *(emphasis provided by Plaintiff)* of any issue of fact in any such action for recovery of amounts owing as a result of a violation of this chapter, ..."

Questions:

1. Did the Judgment Order dated October 27, 1999 by Marvin J. Garbis, District Court Judge of the Federal District Court for the District of Maryland, denying Plaintiff so much as a even a pre-trial hearing, much less a trial by jury, in any way violate the legal rights conferred on Plaintiff by Congress in the 1967 ADEA legislation?

2. Did the Memorandum and Order dated October 27, 1999 by Judge Garbis recite false information (based on false submissions to the Court by Defendant) that Plaintiff could have easily proven to be false or otherwise impeached, given the opportunity to do so in a pre-trial hearing or jury trial, and did such erroneous action by Judge Garbis in any way violate the legal rights conferred on Plaintiff by Congress in the ADEA?

3. Did the Memorandum and Order dated November 10, 1999 by Judge Garbis, denying Plaintiff's Motion to Reconsider, in any way violate the legal rights conferred on Plaintiff by Congress in the ADEA?

4. Did the Memorandum and Order dated November 10, 1999 by Judge Garbis, denying Plaintiff's Motion to Reconsider, in any way conflict with prior Supreme Court decisions; Burdine, U.S. at 254-55 and Weyerhaeuser Corp. v. Koppers Co.?

5. Did the Memorandum and Order dated February 1, 2000 by Judge Garbis, denying Plaintiff's Motion to Supplement the Record, in any way inhibit Plaintiff's ability to present pertinent facts for consideration before the United States Court of Appeals for the Fourth Circuit or otherwise violate the legal rights conferred on Plaintiff by Congress in the ADEA?

6. Did the Unpublished Per Curiam Opinion dated May 3, 2000 by Circuit Judges Niemeyer and Motz and Senior Circuit Judge Butzner of the United States Court of Appeals for the Fourth Circuit, denying Plaintiff's Appeal, in any way violate the legal rights conferred on Plaintiff by Congress in the ADEA?

7. Did the Order dated June 5, 2000 by the Circuit Court denying Plaintiff's Petition for Rehearing, in any way violate the legal rights conferred on Plaintiff by Congress in the ADEA?

As stated in the EEOC COMPLIANCE MANUAL;

> "An interpretation of Title VII that permits some forms of retaliation to go unpunished would undermine the effectiveness of the EEO statutes and conflict with the language and purpose of the anti-retaliation provisions."
>
> "If retaliation ...were to go unremedied, it would have a chilling effect upon the willingness of individuals to speak out against employment discrimination."

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TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI.....1

APPENDIX

MEMORANDUM AND ORDER dated October 27, 1999 by United States District Court Judge Marvin J. Garbis. 5

JUDGMENT ORDER dated October 27, 1999 by United States District Court Judge Marvin J. Garbis.....18

MEMORANDUM AND ORDER dated November 10, 1999 by United States District Court Judge Marvin J. Garbis.....19

MEMORANDUM AND ORDER dated February 14, 2000 by United States District Court Judge Marvin J. Garbis.....21

UNPUBLISHED PER CURIAM OPINION dated May 3, 2000 by Circuit Court Judges NIEMEYER and MOTZ and Senior Circuit Judge BUTZNER.....22

ORDER dated June 5, 2000 by Patricia S. Connor, Clerk.....24

MANDATE dated June 13, 2000 by Patricia S. Connor, Clerk.....25

TABLE OF AUTHORITIES

1. The Age Discrimination in Employment Act of 1967 (Pub. L. 90-202) (ADEA) (29 U.S.C. 621) enacted by the Senate and House of Representatives of the United States of America in Congress.

2. EEOC COMPLIANCE MANUAL, Section 8 on "retaliation," Volume 2 dated May 20, 1998, Paul M. Igasaki, Chairman, EEOC DIRECTIVES TRANSMITTAL Number 915.003

Petition for Writ of Certiorari

1. When the United States Congress passed The Age Discrimination in Employment Act of 1967 (ADEA), both the intent of the legislation and the letter of the law are without ambiguity as to the rights of any aggrieved person with respect to a trial by jury. The law clearly states **"shall be entitled."** Plaintiff clearly requested a jury trial in the original Complaint.

There can be no dispute that this fundamental basic right, granted to the Plaintiff by the elected representatives of the people in 1967 by the ADEA, was **denied** to Plaintiff by the Judgment Order dated October 27,1999 issued by Federal District Court Judge Marvin J. Garbis in the Federal District Court for the District of Maryland. Not only did Judge Garbis NOT order the jury trial called for in the legislation, but also refused to even hold a pre-trial hearing.

2. In the Memorandum and Order dated October 27, 1999, Judge Garbis recited information proffered by Defendant Employer that is completely and totally false. Judge Garbis apparently accepted everything submitted to his Court by Defendant Employer as truthful, while ignoring evidence submitted by Plaintiff, including a Deposition given under oath by Plaintiff, that casts serious doubt on Defendant Employer's claims. Had Judge Garbis ordered a pre-trial hearing or the jury trial mandated by law, Plaintiff would have easily impeached the false evidence submitted by Defendant Employer.

At the very least, Plaintiff was denied the right to cross-examine Defendant's false information.

3. As contained in Plaintiff's Motion to Reconsider, Judge Garbis made several other errors in the October 27, 1999 decision and exacerbated the injustice suffered by Plaintiff in the Memorandum and Order dated November 10, 1999 in which Judge Garbis again denied Plaintiff's legal right to a trial by jury.

4. As pointed out in Plaintiff's APPEAL TO U.S. CIRCUIT COURT and STATEMENT OF THE CASE, District Court Judge Garbis, in the Memorandum and Order dated November 10, 1999, failed to comply with conclusions of two (2) previous Supreme Court decisions; Burdine, U.S. at 254-55 and Weyerhaeuser Corp. v. Koppers Co., Inc. Both failures go straight to the issue of the absolute need for a jury trial as called for in the ADEA to protect persons aged forty (40) and over discriminated against because of their age.

5. In Judge Garbis' Memorandum and Order dated November 10, 1999, denying Plaintiff's Motion to Supplement the Record, Plaintiff was again denied the opportunity to present, to both the District Court and to the Circuit Court of Appeals, pertinent evidence as to the truthfulness of Defendant Employer's false claims. Because Judge Garbis denied Plaintiff's Motion, the Circuit Court failed to consider such evidence and even stated as much in its subsequent opinion.

6. The Circuit Court's Unpublished Per Curiam Opinion dated May 3, 2000 not only failed to recognize Plaintiff's legal right to a trial by jury as provided for in the ADEA, but also failed to address Judge Garbis' failure to comply with the two (2) Supreme Court decisions cited earlier.

7. The Circuit Court Order dated June 5, 2000 denying Plaintiff's Petition for Rehearing once again ignored the law passed by Congress with respect to Plaintiff's legal right to a trial by jury.

SUMMARY

On March 17, 1997, Plaintiff, relying on the provisions of the Age Discrimination in Employment Act of 1967 and information about the ADEA published by the Equal Employment Opportunity Commission (EEOC), engaged in his legal right oppose Defendant Employer's age discriminatory practices. Even Judge Garbis correctly concluded that this constituted a "protected activity" under the law. Thirty-nine days later, on April 24, 1997, Defendant Employer retaliated against Plaintiff by terminating Plaintiff's employment. Even Judge Garbis correctly concluded that this constituted an "adverse action." Since then, Plaintiff has NOT received any of the "protection" granted under the ADEA and regulations promulgated by the EEOC.

While an agency of the government, in this case the EEOC, may be unable or even unwilling to enforce the laws passed by Congress, the Courts have no such option. Unless and until the Age Discrimination in Employment Act of 1967 is judged to be unconstitutional by the United States Supreme Court, the people in our democratic society demand that the Courts uphold the laws passed by their elected representatives. It should be noted that the constitutionality of the ADEA is NOT at issue in this case.

Therefore, the only way this Plaintiff can obtain the protection granted under the ADEA is for the Courts to uphold the provisions of that law. In this case, the ADEA clearly mandates that the Plaintiff be granted a trial by jury. The decisions of the Federal District Court for the District of Maryland and the United States Court of Appeals for the Fourth Circuit in this case have denied Plaintiff this legal right granted to Plaintiff by the United States Congress.

It should be noted that Defendant Employer has consistently and repeatedly refused Plaintiff's numerous offers to submit this dispute to either mediation and/or binding arbitration.

James M. Thompson, pro se
12 Snowberry Court
Hunt Valley, MD 21030

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAMES M. THOMPSON, Plaintiff vs.
PETE'S BREWING COMPANY, Defendant
CIVIL ACTION NO. MJG-98-1907

MEMORANDUM AND ORDER

The Court has before it Defendant's Motion for Summary Judgment, Plaintiff's Motion for Summary Judgment, and the materials submitted by the parties relating thereto. The Court finds that a hearing is unnecessary to resolve the motions.

I. BACKGROUND

Plaintiff James M. Thompson ("Thompson" or "Plaintiff"), pursuing this action pro se, is a former employee of Defendant Pete's Brewing Company ("Pete's" or "Defendant"). Defendant hired Plaintiff as an Area Sales Manager of the "D.C. Market"[1] in August of 1994, when Plaintiff was forty-seven.

Plaintiff allegedly was a victim of age discrimination while being employed at Pete's. Plaintiff alleges the following which he claims indicate age discrimination:

- Plaintiff applied for employment at Pete's in January of 1994 but was not hired until August of 1994.

- Pete's failed to promote Plaintiff on numerous occasions during the entire thirty-three

1 *This market includes Washington, D.C., Maryland, Northern Virginia, and parts of West Virginia.*

months of his employment at Pete's (namely, between August of 1994 and April of 1997).

- Pete's management threatened and intimidated Plaintiff in an effort to discourage him from asserting his rights.

- A manager at Pete's humiliated Plaintiff in front of all employees of Pete's at a company meeting by making a joke about Plaintiff's being the oldest company employee.

On March 17, 1997, Plaintiff wrote a letter to Heather Durbin ("Durbin"), Director of Human Resources at Pete's, expressing his concerns regarding possible age discrimination. On April 22, 1997, Durbin concluded her investigation of Plaintiff's allegations and found that no age discrimination existed.

On April 24, 1997, Paul Harvey ("Harvey"), Pete's national sales manager, fired Plaintiff. On June 4, 1997, Plaintiff filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), claiming that Pete's discriminated against him on the basis of his age and retaliated against him for exercising his rights. Defendant contends that it terminated Plaintiff's job because of his poor work performance.

On May 28, 1998, EEOC issued Plaintiff a Notice of Right to Sue. Plaintiff timely filed the instant lawsuit on June 16 1998, alleging age discrimination and retaliation in violation of the Age Discrimination and Employment Act of 1967 ("ADEA"), 29 U.S.C. *S* 621 et seq.

Plaintiff and Defendant each seek

summary judgment[2] under Rule 56 of the Federal Rules of Civil Procedure.

II. LEGAL STANDARD

A motion for summary judgment shall be granted if the pleadings and supporting documents "show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. p56(Q). The well-established principles pertinent to such motions can be distilled to a simple statement.

The Court must look at the evidence presented in regard to the motion for summary judgment through the non-movant's rose-colored glasses, but must view it realistically. After so doing, the essential question is whether a reasonable fact finder could return a verdict for the non-movant or whether the movant would, at trial, be entitled to judgment as a matter of law. E.g. - Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59 (1970); Shealy v. Winston, 929 F.2d 1009, 1012 (4th Cir. 1991).

III. DISCUSSION

A. Age Discrimination Claim

1. In General

To establish that an employer has discriminated against its employee, a plaintiff may prove intentional unlawful discrimination in

[2] *Plaintiff moves for summary judgment solely on the basis of Defendant's alleged failure to comply with Magistrate Judge Gauvey's Order of March 4, 1999 compelling a response to Plaintiff's discovery request.*

one of two ways. First, a plaintiff may introduce "direct or indirect evidence relevant to, and of sufficient probative force to support as a reasonable probability, the inference that but for [his age] a different result would have occurred." Riley v. Technical & Management & Servs. Corp., Inc., 872 F. Supp. 14 54, 14 6 0 (D. Md. *19 9* 5), aff 'd, 79 F.3d 1141 (4th Cir. 1996). In this case, Plaintiff has not come forward with such evidence.

Second, Plaintiff may satisfy his burden in a discriminatory treatment case by using a three-step approach recognized in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and reaffirmed in Texas Dep't Of Community Affairs v. Burdine 450 U.S 248 (1981). Plaintiff has the initial burden of making out a prima facie case of unlawful discrimination. To establish a claim of age discrimination under 29 U.S.C. *Sc* 633a, Plaintiff must prove (1) he is a member of the protected group; (2) he has suffered unfavorable employment action; and (3) age was a "determining factor" in his employer's decision to take adverse employment action. Proud v. Stone, 945 F.2d 796, 797 (4th Cir. 1991)

Once a prima facie case has been made out, the burden shifts to the defendant to advance a legitimate, non-discriminatory reason for the termination. As the Supreme Court has stated,

It is sufficient if the defendant's evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff. To accomplish this, the defendant must clearly set forth, through the introduction of admissible evidence, the reasons for the plaintiff's rejection. The explanation

> provided must be legally sufficient to justify a judgment for the defendant.

Burdine, 450 U.S. at 254-55 (footnotes omitted).

If the defendant carries this burden of production, the presumption raised by the prima facie case is dropped, and the factual inquiry "proceeds to a new level of specificity." Id. at 255. The burden now shifts back to the plaintiff and

> "merges with the [plaintiff's] ultimate burden of persuading the court that [the plaintiff] has been the victim of intentional discrimination. [Plaintiff] may succeed in this either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence. Id.

The ultimate burden of persuading the fact-finder that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507 (1993).

2. Prima Facie Case

It is doubtful that Plaintiff has established a prima facie case of age discrimination. Specifically, while Plaintiff has established that he is a member of the protected class[3] and experienced adverse employment action[4], Plaintiff has failed to present evidence to prove that age was a determining factor in Defendant's

[3] *Plaintiff was forty-seven when began working at Pete's and is, therefore, a member of the protected class.*

[4] *It is not disputed that Defendant terminated Plaintiff's employment on April 24, 1997.*

decision to fire him. To the contrary, there is substantial evidence in the record that Defendant terminated Plaintiff's employment because of unsatisfactory work performance Among the documented problems with Plaintiff's performance were that Plaintiff put no efforts into forecasting the market of which he was in charge, showed no interest in promoting Pete's beer by missing major sales events, mismanaged wholesalers who purchased and distributed Pete's beer, and failed to supervise the sales staff. Def's Mem. at 4, Ex. A pp10-27; Ex. C pp5-21; Ex. D pp4 26.

Furthermore, evidence presented by Defendant shows that Plaintiff's inattention to his responsibilities caused wholesalers to place their orders incorrectly, price promotions to be delayed or not on budget, supplies to go out of date, and distributors to run out of Pete's beer. Id. at 10-11, Ex. E at 73, 107-08, 156. Pete's upper management concluded that Plaintiff's mismanagement and inattention were preventing Pete's from growing in the D.C. Market. Id. at 11, Ex. A p12.

Pete's upper management was informed of this problem and, thus, when Plaintiff's supervisor, Mark Angelone ("Angelone"), and Angelone's superior, Dick Williams ("Williams"), suggested in April of 1997 that Plaintiff Is employment be terminated, Pete's upper management was prepared to take action. Id. at 9, Ex. A pp22-23, 29-30; Ex. C pp13, 21.

Plaintiff claims that, contrary to Defendant's evidence, he was one of the best, if not the best, employees of Pete's. Pl'S Mem. There is evidence that Plaintiff initially performed

well at Pete's and, indeed, won the Sales Manager of the Year award[5] for 1995. Def's Mem. at 4, Ex. A p9. Nonetheless, while Plaintiff's initial performance at Pete's was satisfactory, there is substantial evidence that when the beer market became increasingly competitive, Plaintiff failed to meet his employer's expectations. Id. at 8, Ex. A p10, Ex. C p4. Specifically, Defendant's evidence establishes that Plaintiff disengaged from his job at a crucial time, namely, when Pete's faced fierce competition beginning in mid-1996. Id.

During this period, Plaintiff failed to promote Pete's beer among the wholesalers, put no efforts into business forecasting, spent considerable time on his outside golf business[6], and neglected to attend a "crew drive," an important sales event within the D.C. Market managed by Plaintiff. Id. at 4, Ex. A pp10-27; Ex. C pp5-21; Ex. D pp4-26. This evidence supports the position that Plaintiff's performance had materially eroded by the time of Defendant's decision to terminate the employment. The mere fact that Plaintiff had done an outstanding job in 1995 does not demonstrate that he was performing in a satisfactory manner in 1997, when he was fired. In view of the evidence

5 *This award was based upon total sales*

6 *Plaintiff invented a golf putter called the "Green Gorilla," marketed by a company known as Mammoth Golf, and promoted this invention while working for Pete's. Def's Mem. at 22-23, Ex. A p25; Ex. C; Ex. K.*

presented by Defendant, contradicted only by Plaintiff's bare allegations, a reasonable fact finder could not conclude that Plaintiff was performing in a satisfactory manner when his employment was terminated. Accordingly, the Accordingly, the Court concludes that Plaintiff has not carried his minimal burden of establishing a prima facie case. Nevertheless, for completeness, the Court will assume for purposes of discussion, that Plaintiff had presented a prima facie case.

3. Defendant's Legitimate Reasons

Even if Plaintiff has carried his minimal burden of establishing a prima facie case, there is no doubt that Defendant has articulated a legitimate, nondiscriminatory reason for Plaintiff's termination. That is, as discussed above, Plaintiff was not performing satisfactorily. The burden thus shifts back to Plaintiff to come forward with evidence that Defendant's proffered explanation is a pretext and that the real reason for his firing was age discrimination

4. Proof of Pretext and Discrimination

Plaintiff has failed to come forward with evidence from which a reasonable fact finder could conclude that the Defendant's justification was a pretext for illegal discrimination. Plaintiff alleges that he was discriminated against by Pete's in that, he had applied for employment in January of 1994 but was not hired until August of 1994. Pl's Compl. at 2-3 p4. The relevance of this allegation in an age discrimination context is less than clear. The fact that Plaintiff was hired seven months after he applied for the job does

not support the allegation of age discrimination. If relevant at all, it would indicate that Defendant chose to delay hiring until Plaintiff was somewhat older than he was at the time of his application.

Plaintiff claims that Defendant discriminated against him by failing to promote him on "numerous occasions between August 1994 and April 1997." Id. Plaintiff has presented no evidence as to any promotion which became available for which he was qualified, and for which he applied but was not selected because of his age in short, while Plaintiff makes a conclusory statement that Defendant "discriminated against Plaintiff because of age for seven months before hiring Plaintiff in 1994, and during Plaintiff's entire thirty-three months of employment," he cites to no evidence in support of these proclamations.

Indeed, the only "evidence, of alleged age discrimination to which Plaintiff points is an incident in which Jeff Atkins, then the new Chief Financial Officer of Pete's, "humiliated Plaintiff at a company meeting in front of all employees by making a joke about Plaintiff's being the oldest company employee." Pl'S Compl. p6. Plaintiff testified in his deposition that Atkins

> "was trying to be funny by saying that he was so impressed with how young everyone in the company was throughout his interviews and subsequent employment that he was afraid he might be the oldest person there, but he was extremely relieved to learn that he wasn't."

That, in fact, [Plaintiff] was [the oldest employee]."

Def's Mem. at 29, Ex. B at 127-128. Atkins, remark, in context, does not support the allegation that Plaintiff's termination was motivated by age discrimination. See Blahut v. Grainger, 1993 WL 454359 * 4, 5, aff'd, 36 F.3d 1091 (4th Cir. 1993) (defendant's comment to plaintiff that "you can't teach an old dog new tricks," as a matter of law, did not establish that plaintiff would not have been fired but for his age).

Plaintiff disputes Defendant's justification for terminating Plaintiff's employment, persistently protesting that Defendant's witnesses are lying, that Defendant's exhibits are fraudulent, and that Defendant's lawyers are submitting falsified documents. See Pl's Mem., "Statement of the Case." Specifically, Plaintiff claims that Pete's own financial problems in the D.C. Market in the fall of 1996, rather than Plaintiff's performance, were "the root of much of the problems." Id. "Discussion." Of course, Pete's financial problems have nothing to do with the Plaintiff's age.

Plaintiff has produced nothing more than his own naked opinion. See Evans v. Technologies Applications & Serv. Co., 80 F.3d 954, 959 (4th Cir. 1996) (plaintiff's "own naked opinion, without more, is not enough to establish a prima facie case of discrimination") (internal citations omitted). Plaintiff "must do more than merely raise a jury question about the veracity of the employer's proffered justification." Vaughan v. Metrahealth Co., Inc., 145 F.3d 197, 202 (4th

Cir. 1998) (citations omitted). Namely, "[Plaintiff] must have developed some evidence on which a juror could reasonably base a finding discrimination motivated the challenged employment action." The Court fails to see how the mere allegations made by Plaintiff indicate that Defendant's proffered explanations for Plaintiff's termination are pretextual. In context, Plaintiff's evidence cannot reasonably be the basis for a finding of age discrimination against Plaintiff.

In sum, Plaintiff has failed to come forward with evidence from which a reasonable fact finder could conclude that Defendant's proffered justifications for Plaintiff's termination were pretextual and that Plaintiff was the victim of age discrimination. Accordingly, Defendant is entitled to summary judgment on Plaintiff's age discrimination claim.

B. Retaliation Claim

To make out a prima facie case of retaliation, a plaintiff must show:

1. That the plaintiff engaged in a protected activity;
2. that the employer took an adverse employment action against the plaintiff; and
3. that a causal connection exists between the protected activity and the adverse action.

Ross v. Communications Satellite Corp., 759 F.2d 355, 365 (4th Cir. 1985) overruled on other grounds, 490 U.S. 228 (1989).

On March 17, 1997, Plaintiff wrote a letter to Durbin Pete's Human Resources Manager,

addressing his concerns regarding possible age discrimination. On April 24, 1997, Plaintiff's employment was terminated. Therefore, Plaintiff has established a protected activity followed by adverse employment action. However, Plaintiff has come forward with no evidence which would demonstrate a causal connection between his protected activity and the adverse employment action taken against him. The mere fact that Plaintiff's termination occurred after his protected activity is insufficient on its own to prove a causal connection between the two. See Olivares v. NASA, 934 F. Supp. 698, 705 (D. Md. 1996). Furthermore, the record indicates that Defendant had numerous problems with Plaintiff's performance well before Plaintiff was terminated. See discussion supra at 7-9.

Assuming arguendo that Plaintiff could establish a prima facie case of retaliation, Defendant has clearly proffered a legitimate, nonretaliatory justification for his termination[7]. To avoid summary judgment, Plaintiff bears the burden of presenting evidence of age discrimination "of sufficient probative force to reflect a genuine issue of material fact." EEOC v. Clay Printing Co., 955 F.2d 936, 940 (4th Cir. 1992). Here, other than conclusory allegations, Plaintiff has not produced evidence sufficient from which a reasonable fact finder could conclude that the Defendant's nondiscriminatory

[7] *Retaliation claims are subject to the same McDonnell Douglas burden shifting analysis as disparate treatment claims. Ross, 759 F.2d at 365.*

explanation is pretextual. Accordingly, Defendant is entitled to summary judgment on Plaintiff's retaliation claim.

C. Defendant's Failure to Comply With Magistrate Judge's Order

Plaintiff contends that he is entitled to summary judgment because Defendant failed to comply with Magistrate Judge Gauvey's order of March 4, 1999 ("March 4 Order") compelling a response to Plaintiff's request for information. The record establishes that Defendant did comply with the March 4 Order by serving upon Plaintiff Defendant's Supplemental Responses to Plaintiff's Discovery Requests. Thus, Plaintiff's argument in support of his summary judgment motion is groundless. Even if there had been a discovery violation as alleged by Plaintiff, the Court would not impose the drastic sanction of a default judgment. Accordingly, Plaintiff's Motion for Summary Judgment shall be denied.

IV. CONCLUSION

For the foregoing reasons:

1. Defendant Pete's Brewing Company's Motion for Summary Judgment is GRANTED.
2. Plaintiff James M. Thompson's Motion for Summary Judgment is DENIED.
3. Judgment shall he entered by separate Order.

SO ORDERED this 27th day of October 1999.
s/Marvin J. Garbis
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAMES M. THOMPSON, Plaintiff vs.
PETE'S BREWING COMPANY, Defendant
CIVIL ACTION NO. MJG-98-1907

JUDGMENT ORDER

For the reasons stated in the Memorandum and Order issued this date:

I. Judgment shall be, and hereby is, entered in favor of Defendant Pete's Brewing Company against Plaintiff James M. Thompson.

2. Any and all prior rulings against any parties are incorporated by reference herein.

3. This Order shall be deemed to be a final judgment within the meaning of Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED this 27TH day of October, 1999
s/Marvin J. Garbis
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAMES M. THOMPSON, Plaintiff vs.
PETE'S BREWING COMPANY, Defendant
CIVIL ACTION NO. MJG-98-1907

MEMORANDUM AND ORDER

The Court has before it Plaintiff's Motion To Reconsider and the materials submitted by the Plaintiff relating thereto. The Court finds that neither a response nor a hearing is necessary.

As stated by Judge Ramsey in Weyerhaeuser Corp. v. Koppers Co., Inc.:

> A motion for reconsideration (or, to alter or amend judgment) made pursuant to Fed. R. Civ. P. 59 (e) may be made for one of three reasons: (1) an intervening change in the controlling law has occurred, (2) evidence not previously available has become available, or (3) it is necessary to correct a clear error of law or prevent manifest injustice.

771 P. Supp. 1406, 1419 (D. Md. 1991) (citation omitted). Such a motion "cannot be used to raise arguments which could, and should, have been made before [the determination to be reconsidered] issued." Federal Deposit Ins. Corp. v. Meyer, 781 P. 2d 1260, 1268 (7th Cir. 1986) (citation omitted).

Regretfully, Plaintiff does not understand that his bare allegations, without evidentiary

support, are inadequate to prevent summary judgment as to matters on which he - not the Defendant - has the burden of proof. For reasons set forth in the Memorandum and Order granting summary judgment of October 27, 1999, the Court granted summary judgment to the Defendant. The Motion to Reconsider presents no issue that was not adequately addressed in the Memorandum and Order. Nor does it present a persuasive reason for the Court to change its view of this case.

For the foregoing reasons:

I. Plaintiff's Motion To Reconsider is DENIED.

2. The Judgment Order issued on October 27, 1999 herein remains in effect.

SO ORDERED THIS 10th DAY OF November, 1999

s/Marvin J. Garbis
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAMES M. THOMPSON, Plaintiff vs.
PETE'S BREWING COMPANY, Defendant
CIVIL ACTION NO. MJG-98-1907

MEMORANDUM AND ORDER

The Court has before it Defendant's Motion to Supplement the Record filed January 3, 2000, Plaintiff's Motion to Supplement the Record filed January 31, 2000 and the materials submitted relating thereto.

Plaintiff filed a document which was treated as a Notice of Appeal on November 22, 1999, has paid his appellate filing fee and is proceeding on appeal. The pertinent record in this case appears to be that which, was before the Court when rendering the decision granting summary judgment to the Defendant. If the United States Court Of Appeals for the Fourth Circuit wishes to have the existing record augmented, for some reason, it can and will take appropriate action.

For the foregoing reasons:

1. Defendant's Motion to Supplement the Record filed January 3, 2000 is DENIED.
2. Plaintiff's Motion to Supplement the Record filed January 31, 2000 is DENIED.

SO ORDERED THIS 14th DAY OF February 2000.
s/Marvin J. Garbis
United States District Judge

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 99-2647

JAMES M. THOMPSON, Plaintiff - Appellant, versus
PETE'S BREWING COMPANY, Defendant - Appellee

Appeal from the United States District Court for the District of Maryland, at Baltimore. Marvin J. Garbis, District Judge. (CA-98- 1907-MJG)

Submitted: April 27, 2000 Decided: May 3, 2000

Before NIEMEYER and MOTZ, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

James M. Thompson, Appellant Pro Se. Burton John Fishman, OGLETREE, DEAKINS, NASH, SMOAK, & STEWART, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:
James M. Thompson appeals the district court's orders denying relief in Thompson's age discrimination in employment action and denying his Fed. R. Civ. P. 59 motion. We have

reviewed the record and the district court's orders and find no reversible error.

Accordingly, we affirm on the reasoning of the district court°. See Thompson v. Pete' s Brewing Co., No. CA-98-1907-MJG (D. Md. Oct. 27 & Nov. 10, 1999).

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

° Thompson apparently has filed in the district court a motion to supplement the record on appeal. Because this motion is not before this court, we decline to act on it.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-2647 CA-98-1907-MJG

JAMES M. THOMPSON, Plaintiff – Appellant v. PETE'S BREWING COMPANY, Defendant-Appellee

FILED June 5, 2000

ORDER

The appellant has filed a petition for rehearing.

The Court denies the petition for rehearing.

For the Court,
s/Patricia S. Connor, CLERK

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 99-2647
CA-98-1907-MJG
Thompson v. Pete's Brewing Co.

FILED: June 13, 2000

MANDATE

The judgment of this Court dated 5/3/00 takes effect today.

s/PATRICIA S. CONNOR, CLERK